



CITIZENS FOR LABOR AND ENVIRONMENTAL JUSTICE

June 11, 2019

TO WHOM IT MAY CONCERN:

The Environmental Protection Agency's proposed plan for amendment to the Butte Priority Soils Operable Unit (BPSOU) Record of Decision does not adequately address Environmental Justice (EJ). This is an important omission that by EPA guidance must be a consideration. There are many technical elements of the plan that deserve scrutiny, however other groups and individuals will concentrate on these aspects. We concur with many of their concerns, but we will focus our comments within our mission of Environmental Justice.

The EPA defines Environmental Justice as: the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys:

- the same degree of protection from environmental and health hazards, and
- equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

It is the belief of Citizens for Labor and Environmental Justice (CLEJ) that neither of these criteria have been met in the proposed plan or the subsequent community involvement process.

By the EPA's definitions Uptown Butte is an "Overburdened Community", one with a low-income and indigenous populations and disproportionate exposure to environmental harms or risks. Notice the map included here from the EPA's EJ screen tool. It is clear the Operable Unit is comprised of a disproportionately low-income population. Yet the Proposed plan, nor the ROD, account for the effects of contamination and remediation on these vulnerable populations.

Ways in which the Uptown EJ community does not experience the same degree of protection:

- Many low-income residents rent their homes and do not have access to the Residential Metals Abatement Program (RMAP).
- RMAP outreach relies on media and methods not necessarily accessible to EJ communities.

- The health studies do not recognize the differential effects of contaminants on EJ communities. A myriad of factors, including lower access to healthcare, make these communities more vulnerable.
- Many of the insufficiently reclaimed areas are near low income neighborhoods and are frequented by children from those communities.
- Many vacant lots remain unreclaimed and are often play areas for children of EJ communities.
- Recreational opportunities are limited for EJ communities; loss of free and accessible natural features affect EJ communities disproportionately.

Ways the Uptown EJ community does not experience equal access to the decision-making process:

- The long-time federal gag order and ongoing lack of transparency are all but impenetrable to EJ communities.
- Many aspects of the revised RMAP plan are of particular interest to EJ communities, yet the release has been postponed until after the comment periods end.
- The public meeting/comment solicitation process is not conducive to engaging EJ communities. Many have familial and occupational obligations that prevent attending such meetings.
- The technical documents that define the remedy are not understandable to many in the EJ communities.
- The most impacted residents are not consulted and are often in the EJ communities. ie the neighborhoods around the Grove gulch, Northside tailings, and Diggin's East were not consulted on remediation that will have significant impacts on their communities.
- Health concerns regarding children playing in and around stormwater basins have not been addressed.
- Surface water waivers failed to account for the human health risks borne by the EJ communities. Indigenous and low-income residents utilize our waterways for recreation and sustenance fishing at higher rates than average populations.
- The historical use and treaty rights of indigenous peoples were not considered in remediation negotiations.

It is our opinion that the proposed plan needs to explicitly address environmental justice. Low income and indigenous communities need to be brought in to the decision-making process and protected equally. Potential actions include:

- Find ways to include EJ communities in the discussion, especially those most impacted by these decisions. Recognize previous attempts have failed and try new ways of meeting people where they are at.
- A major goal of the EPA, in their EJ 2020 Action Agenda, is to work to eliminate disparities in childhood blood lead levels as an integral part of reducing lead exposure for all people.

Reexamine lead action levels in Butte and bring them in line with current public health trends.

- Codify more of the RMAP work-plan into the ROD Amendment. Include mechanisms for the systematic completion of all residences, prioritizing rentals with children present. Include testing and remediation of vacant lots and play areas, with residential action levels. Include a robust, long-term health study that analyzes the disproportionate effects on the most vulnerable populations.
- When capping remaining and insufficiently reclaimed areas, prioritize areas in close proximity to EJ communities such as the swath East of Silver Bow Homes.
- Reexamine risks for surface water recreation. Consider populations that may be exposed to metals at home, school or work, and where they play. Consider sustenance fishing. Look closely at EJ communities right on these waterways such as homes on Grove gulch or the neighbors to the future basins.
- Replace lost ecological and recreational resources, or at least plan for the eventual restoration.
- Consult with local and regional indigenous people. Allow them meaningful input on the plan from start to finish. This is not only a treaty right, it is a fundamental component of environmental justice.

Specific concerns of members of the Board of CLEJ are attached and made part of this document.

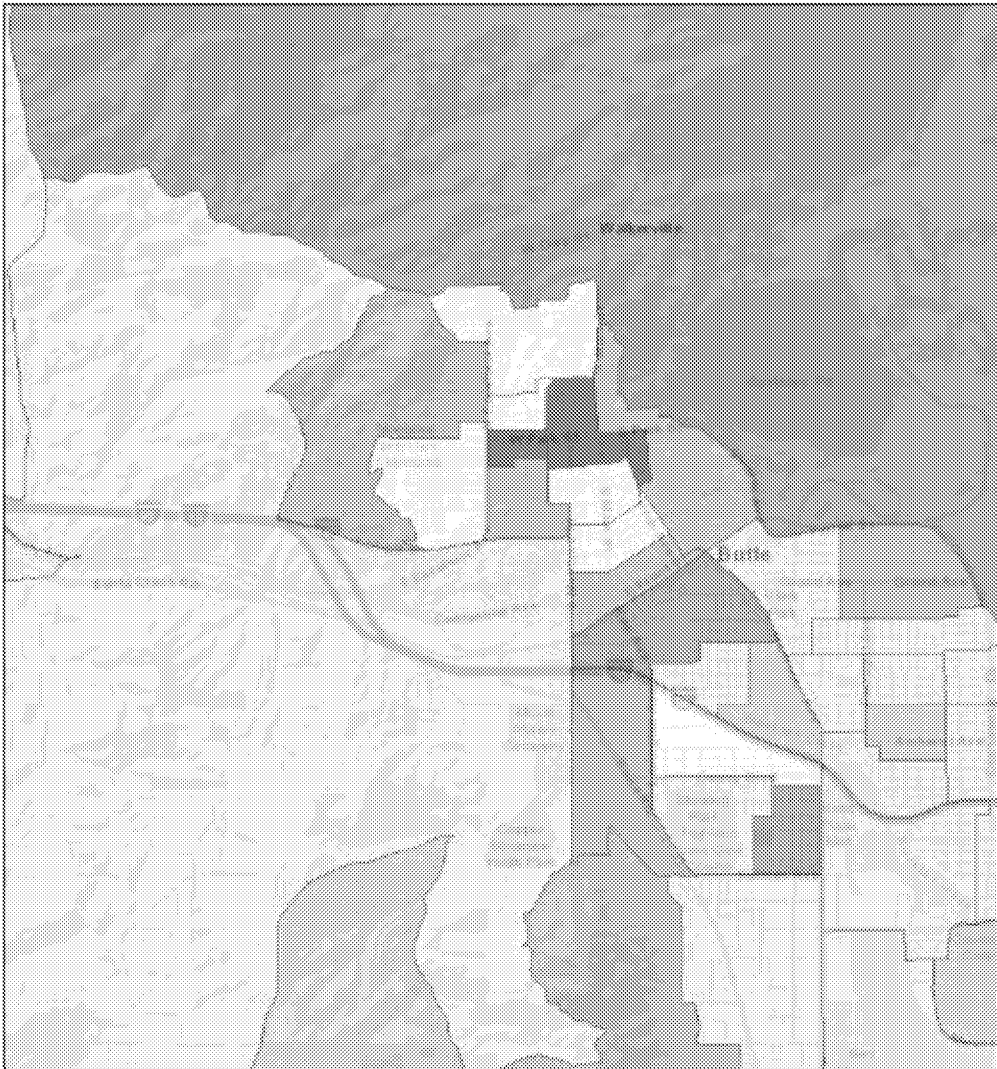
Thank you for considering these points, we look forward to your response and modifications to the Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "David Hutchins". The signature is stylized with a large, sweeping initial "D" and a cursive "Hutchins".









David Hutchins

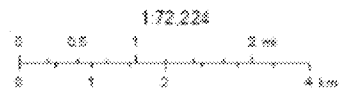
CLEJ Chairman, on behalf of the Board



June 10, 2019

EISCREEN_indexes

- | | |
|---|---|
|  Data not available |  70 - 80 percentile |
|  Less than 50 percentile |  80 - 90 percentile |
|  50 - 60 percentile |  90 - 95 percentile |
|  60 - 70 percentile |  95 - 100 percentile |



Source: ERI, MTR, Green, USGS, Internet, NCHRP/USDOT R-160/01, ERI Japan, MTR, ERI China (Hong Kong), ERI Korea, ERI (Taiwan), NCHRP, or OpenStreetMap contributors, and the GIS User Community
 SPR Oct. 2017

EISCREEN 2018

Specific concerns of members of the Board of Citizens for Labor and Environmental Justice are as follows:

1. Human Health:

a. Health Studies Committee membership: CLEJ has asked for robust health studies related to BPSOU that will expand the breadth of what has been done in the past by including all the human health contaminants of concern and their synergism. Two PhD's on the board of directors of CLEJ were invited to be part of EPA's current health study committee; yet, neither Dr. John Ray nor Dr. Katie Hailer have heard when meetings will occur (or have already occurred). Please let them know so that they may attend and provide input to future meetings.

b. Credible independent scientists have published health research on issues in Butte. Research studies by Dr. Suzanne McDermott, PhD and by Dr. Katie Hailer PhD has been reviewed by EPA epidemiologist Charlie Partridge, by the State of Montana epidemiologists and by the Butte-Silver Bow Health Department. Despite acknowledgement of the validity (but different methodology use) before the BSB Council of Commissioners early this 2019 year, the BSB Health Department stated at the June 5, 2019 Council of Commissioners meeting that "there is no cancer problem in Butte. The statement made just prior to commissioners voting in favor of this ROD amendment, was made without qualification; i.e., other health studies besides that of DEQ did show elevated rates of neurological cancers. CLEJ is concerned that it is remiss for Superfund-related health officials to denigrate or omit data found in independent studies and asks that ALL scientifically produced health data on Butte Superfund issues be provided in understandable form to the citizens of Butte before a ROD amendment is promulgated.

c. Mental Health: CLEJ requests EPA include a study of mental health effects of living within a past and current metal mining site and take actions that mitigate any adverse effects. Butte is among the highest areas in the State of Montana for suicides, and its demographics include that a fifth of its population are poor. Many are members of Indian Peoples Action and its Executive Director is on the Board of CLEJ. Nationally, studies over the past ~20 years indicate detrimental health effects in people who live near or amid pollution. One such study is "Environmental Stressors: The Mental Health Impacts of Living Near Industrial Activity" <https://journals.sagepub.com/doi/abs/10.1177/002214650504600306> which includes this Abstract:

"A growing literature examines whether the poor, the working class, and people of color are disproportionately likely to live in environmentally hazardous neighborhoods. This literature assumes that environmental characteristics such as industrial pollution and hazardous waste are detrimental to human health, an assumption that has not been well tested. Drawing upon the sociology of mental health and environmental inequality studies, we ask whether industrial activity has an impact on psychological well-being. We link individual-level survey data with data from the U.S. Census and the Toxic Release Inventory and find that residential proximity to industrial activity has a negative impact on mental health. This impact is both direct and mediated by individual perceptions of neighborhood disorder and personal powerlessness, and the impact is greater for minorities and the poor than it is for whites and wealthier individuals. These results suggest that public health officials need to take seriously the mental health impacts of living near industrial facilities."

d. Adults and Lead Exposure: While Butte area concerns about Lead exposure are, to date, understandably directed toward children, EPA does acknowledge that older people are at risk from long term exposure to Lead; e.g., this statement from <https://gispub.epa.gov/air/trendsreport/2018/#effects>: "HEALTH EFFECTS Depending on the level of exposure, lead may harm the developing nervous system of children,

resulting in lower IQs, learning deficits and behavioral problems. Longer-term exposure to higher levels of lead may contribute to cardiovascular effects, such as high blood pressure and heart disease in adults.” Health studies in Butte must include adults.

e. Biomonitoring of humans: The health risk assessment document accompanying the proposed ROD amendment indicates that environmental biomonitoring of nesting birds will assure they are safe around the stormwater retention ponds and, if needed, measures will be taken to mitigate any adverse effects. CLEJ asks that biomonitoring of youngsters who access the area also be considered to assure NO component of this contaminated water has a detrimental effect on small humans, and if so, a mitigation plan be put into effect. That health risk assessment document contains no mention of immune-compromised individuals. CLEJ asks that a discussion of the most vulnerable humans be addressed in this Record of Decision amendment.

f. Lead Standard: No exposure to Lead is acceptable according to the Centers for Disease Control. The up to 1200 ppm standard allowable for Lead in Butte is the highest in the nation. That is not “good enough for Butte.” That standard was set at a time when inorganic Lead was thought to be less harmful than organic (or heated/smelted) Lead, since disproven. As smelting did occur in Butte, as well as in Anaconda, CLEJ believes EPA must lower the Lead level that is acceptable to that of Anaconda – 400 ppm – and redo any removal or capping actions where 1200 ppm was utilized.

g. Residential Metals Abatement Program: CLEJ is pleased to see this program expanded to the entire BSB areas that may have been exposed to smelter smoke. Once again, CLEJ asks EPA to utilize its influence and, if necessary, its enforcement capability to assure renters of homes and apartments be given the same power over their own health that is given to people who own their own homes. Require landlords comply with RMAP’s mandate that inspections take place and, if needed, removal of Lead and Arsenic be accomplished.

h. Children and Stormwater Detention Ponds

- **Content of Stormwater:** EPA’s risk assessment for children playing in stormwater ponds relies on estimates made of the concentrations of Lead, Arsenic, Mercury and Cadmium being so low as to not be able to harm small humans who may play in it or along pond shorelines. However, EPA has not addressed other contents of stormwater; e.g., volatile organic compounds, bacteria, etc. All urban storm sewers pick up bacteria from animal feces, and petroleum organics from breakdown of tarmac. These and other pollutants are swept into storm sewers in rain/snow melt events. Risk assessment for children must, therefore, include consideration of these potentially harmful substances by sampling and analysis of Butte stormwater.
- **Access to Stormwater: “Occasional” access** -- EPA is asked to define its often-used term “Occasional” to say in plain language **what specific frequency** of access by children to stormwater ponds is the acceptable risk. Please state whether this includes youngsters and other people who may have compromised immune systems; i.e., just what level of exposure to the Contaminants of Concern would be acceptable for those whose bodies are least able to resist harm from the toxins in the stormwater.
- **CLEJ position:** CLEJ believes no level of access to stormwater ponds is acceptable for children. Signage directing people to stay away from the ponds and their shorelines is not adequate given the “daredevil” heritage of many Butte youngsters who may find it a challenge to experience playing in

the ponds. Other children may not see the planned signage or may be too young to read or understand it. If stormwater ponds are made a part of remedy, please provide attractive barriers to keep small children from accessing both the contaminated water and the shorelines where ebb and flow will deposit lead and arsenic particles.

- **Who is included in the acceptable risk?** The risk evaluation done by CDM Smith for both humans and wildlife makes no mention of the Environmental Justice communities of more vulnerable people who may be immune-compromised. Please look into high risk individuals and assure stormwater risk assessment includes youngsters and older individuals who may have compromised immune systems, or who may be at increased risk from components in raw stormwater other than metals contaminants. Just what level of exposure to the Contaminants of Concern and other raw stormwater components would be acceptable for those whose bodies are least able to resist harm from the toxins in the stormwater.
- **CLEJ position:** We believe environmental justice dictates no level of exposure to stormwater ponds is acceptable for children and other at-risk individuals. Signage directing people to stay away from the ponds and their shorelines is not adequate given the “daredevil” heritage of many Butte youngsters who may find it a challenge to experience playing in the ponds. Other children may not see the planned signage or may be too young to read or understand it. If stormwater ponds are made a part of remedy, please provide attractive barriers to keep small children from accessing both the contaminated water and the shorelines where ebb and flow will deposit lead and arsenic particles.

II. OTHER BPSOU CONCERNS:

a. Stormwater Ponds effectiveness: Whereas stormwater retention ponds have proven to be 95% effective for removing Copper depending on the time the contaminated water settles, the question occurs, will this still be true when the stormwater is moving through “water features?” CLEJ suggests a test be undertaken to determine if the mobilized stormwater provides at least the same result of 95% effectiveness. If case stormwater retention ponds do not meet expected goals, CLEJ would like stated in the ROD that a backup plan of alternatives will be undertaken to mitigate the problem.

b. One Additional Stormwater Pond: EPA and AR have argued there are no large enough areas on the Butte Hill to accommodate additional stormwater settling ponds, even small ones. The area north of McGruff Park is large and barren around the Andersen Shafts, and that area contributes to the extremely high exceedances of Copper standards in the Warren Avenue stormwater system pipe. CLEJ asks that a new retention pond be built to capture and settle metals from below the Belmont Mine to the Andersen Shafts. Channels could be created to bring stormwater from the western portion of that area into the retention pond. Overflow from this pond may continue to travel to the Silver Bow Creek corridor via the storm sewer located at Andersen Shafts. This new pond should be able to remove 95% of the Copper emanating from this area, just as such ponds have done in other areas of Butte. Creation of this pond at Andersen Shafts will decrease Copper in the Warren Avenue storm drain, and therefore, that flowing into Silver Bow Creek from the Civic Center area. Less Copper in the recirculating stormwater features in the corridor will help AR meet

water quality standards, and it will mean less of any of the stormwater contaminants available to harm children or others who may access and recreate in the stormwater in the corridor.

c. Air Quality: As a means of saving money on cleanup in Butte, in the 1990's Atlantic Richfield initiated the idea of "Historic Mining Landscape" designations so that Historic Prevention laws would prevent some barren soils in Butte from remedial action. Today that phrase is accepted by all the negotiating parties toward this ROD amendment. The American Lung Association and the newspaper, USA Today, report annually on areas of high particulate matter as being dangerous. Both have named Butte, and USA Today even lists elementary, middle and high schools where air quality is poor. This extends the negative perception of Butte as an unhealthful place to live. CLEJ asks EPA to look into means of constraining air-blown dust off "Historic Mining Landscapes."

d. Tailings Removals:

- **Upper Silver Bow Creek:** CLEJ is happy to see removals of tailings from the Silver Bow Creek corridor so that children and other vulnerable people will not be exposed to them in the future. As a member organization of the Restore Our Creek Coalition, our concern has been for future people with the environmental justice hope that undue financial or health burdens not be placed on them due to the fact this plan will allow tailings remain in the Silver Bow Creek corridor below the high groundwater level. We prefer that ALL the accessible tailings be removed so that the creek may repair itself over time.
- **Unremediated or Under-remediated soils:** CLEJ believes these areas must be cleaned of hazardous metals before the desired Technical Impracticability Waiver should go into effect. Otherwise, the incentive for good remediation may not be effective.

###